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Subject: story following the EPA suing Colorado Springs

EPA, state health department file stormwater lawsuit against Colorado Springs

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Caption + Fountain Creek flows brown west of Manitou Springs Saturday, July 7, 2012, after the water receded from rain. (The Gazette, Christian Murdock)

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The U.S. Environmental Protection Agency and the state health department filed a lawsuit Wednesday against the City of Colorado Springs over water quality violations and stormwater program shortfalls dating to 2009.

Mayor John Suthers, who began building a new stormwater program immediately after taking office in June 2015, expressed frustration over the decision by the EPA and the Colorado Department of Public Health and Environment to file legal action rather than recognize recent strides the city has made.

The federal and state agencies are seeking civil penalties that Suthers said could amount to "millions and millions of dollars."

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"What's frustrating is: They know they have a mayor and City Council that recognize the problem, understand the problem and are intent on fixing the problem," the mayor said. "Rather than working with us to get this done, they file a lawsuit.

"This is the kind of lawsuit that gives the EPA a reputation for being over-reaching. Every single dime going to litigate this thing and pay fines should be going into fixing the problem."

Over the past 18 months, the city has:

- ▣ Negotiated and signed a \$460 million, 20-year intergovernmental agreement with Pueblo County to build 71 major stormwater projects. The work is designed to eliminate sedimentation, detain excessive flows and improve water quality in Fountain Creek for local and downstream communities. That pact is backed by Colorado Springs Utilities, which will appropriate needed funds should the city experience a shortfall.
- ▣ Recruited professional engineer Richard Mulledy to manage the stormwater division and beef up the staff of stormwater inspectors and engineers from 28 to 49 full-time employees, with a total of 66 to be on board within the next several months.
- ▣ Increased spending on stormwater from \$5 million in 2015 to \$19 million a year, including \$9.2 million for capital projects, \$3 million from Utilities and \$7.1 million to \$7.8 million, when fully staffed, for the city's Municipal Separate Storm Sewer System, known as an MS4 federal permit, which allows Fountain Creek to flow into the Arkansas River, to the Mississippi River and into the Gulf of Mexico.
- ▣ Started building a \$3 million detention pond on Sand Creek; spending \$2 million to rehabilitate wash-out areas, remedy sediment-transport issues and improve water quality since 2013 flooding, and retrofitting a King Street detention pond so it not only controls flood waters but also manages flow to mimic natural discharge.

When Suthers took office, he lamented a former City Council's decision in 2009 to eliminate the city's Stormwater Enterprise Fund, which had collected \$15 million to \$16 million a year in fees from property owners to spend on stormwater projects.

"Fountain Creek is one of the most unstable, flashy creeks in all the nation. It's a unique animal," engineer Mulledy told The Gazette in March.

The base flow of 120 cubic feet per second can reach 20,000 cfs during a 25-year event, swelling the creek to 100 feet wide and 10 feet deep, he said. "On top of that, the material along that creek is an alluvial field. It's sand. So it's kind of the perfect storm," Mulledy said.

The mayor recognized that city voters repeatedly voted down stormwater measures, so he and the council agreed to address the need directly from the general fund. In order to do so, he froze employee salaries and vacancies, squeezed the police and fire departments, and shelved several planned capital projects this year.

But the EPA and state point to average annual stormwater expenditures of \$1.6 million from 2011 through 2014, when only nine full-time employees worked in stormwater. So surface runoff, streambed degradation, widening and erosion led to sedimentation and unacceptable water quality.

The suit seeks not only penalties, but also injunctive relief to correct all violations and instances of wrongdoing.

It cites a 2000 planning study for the Cottonwood Creek Drainage Basin that eliminated six detention basins and structural measures originally planned, reducing costs by \$11.4 million, but notes that the plan now is being updated and revised.

A 2013 EPA audit identified water-quality control structures at two developments that didn't treat stormwater before discharging it into state waters; seven residential developments without stormwater controls or waivers for such; failure to submit development, inspection and maintenance plans to Engineering Development Review before grading permits were issued, and other failures since 2013 to ensure that policies protecting water quality were followed.

Larry Small, executive director of the Fountain Creek Watershed, Flood Control and Greenway District, has long despaired of the city's years of neglect toward Fountain Creek and stormwater issues.

But that's in the past, Small said.

"John (Suthers) put in that \$460 million plan, he's increased the stormwater department significantly in staffing, he's put processes in place, and he's started at least three significant projects in the last year to deal with it," Small said. "He's got an agreement with Pueblo County that we haven't had in years on managing and monitoring stormwater and to review progress annually and adjust the priorities. As far as John's performance, he's done a great job in the last year and a half.

"From the time the city discontinued its stormwater enterprise until John put planning in place, we had a large number of years with a huge deficiency. But I don't see how a lawsuit is going to correct the problem," he said. "The only thing a lawsuit is going to do is bring in money for the federal government in fines, and what good does that do for the city or the problem?

"A better solution would have been to sit down with monitoring and performance guidelines and allow the city to use that money to make improvements instead of pay fines with it. This is just another example of the federal government using a local issue to raise money."

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